

LABOUR DEPARTMENT

The 28th May, 1969

No. 2902-A.S.O. II-Lab-69/12827.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Gurgaon district ex-Serviceman Transport Co-operative Society Ltd., Gurgaon :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 20 of 1967

between

SHRI RISAL SINGH WORKMAN AND THE MANAGEMENT OF M/S GURGAON DISTRICT EX-SERVICEMAN TRANSPORT CO-OPERATIVE SOCIETY LTD., GURGAON

Present.—

Shri C. B. Kaushik, for the workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Risal Singh was in the service of M/s Gurgaon District Ex-serviceman Transport Co-operative Society Ltd; Gurgaon as incharge of their workshop. He was dismissed from service. He, however, maintains that his services have been wrongfully terminated and this gave rise to an industrial dispute. The Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with the proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,— *vide* Government Gazette Notification No. 106-SF-III-Lab-67/ , dated 7th March, 1967.

Whether the termination of services of Shri Risal Singh is justified and in order? If not to what relief he is entitled?

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri Hans Raj Gupta. The management filed their written statement. The following issues were framed by my learned predecessor.

1. Whether this Court has no jurisdiction to adjudicate upon the present reference on the grounds mentioned in the additional written statement dated 10th April, 1967 of the management?
2. Whether the present reference is barred by the Co-operative Societies Act?
3. Whether the claimant Shri Risal Singh is not a workman within the meaning of the Industrial Dispute Act?
4. Whether the claimant Shri Risal Singh has been dismissed by the respondent society as a result of a valid and proper enquiry?
5. Whether the termination of services of Shri Risal Singh is justified and in order?
6. Relief, if any?

The evidence of the management was recorded by Shri Gupta but before he could record the evidence of the workman he relinquished charge. The evidence of the workman and further evidence of the management was recorded by me but before I could hear the arguments, the High Court of Punjab and Haryana held in a writ Petition No. 1575 of 1966 in the case of the Haryana Co-operative Transport Ltd., Kaithal *versus* The State of Punjab and others that the appointment of my learned predecessor Shri Hans Raj Gupta as Presiding Officer of the Labour Court was not validly made because he did not possess necessary qualifications as laid down in sub section (3) of section 7 of the Industrial Disputes Act, 1947. In view of the findings of the High Court, it was held by me,— *vide* orders dated 4th July, 1968 that all the proceedings conducted by my learned predecessor were null and void. So the workman was given a chance to file his statement of claim afresh. The management also filed a fresh written statement raising a number of technical pleas including the objection that the Court was not properly constituted and the appointment of the Presiding Officer was not valid. These pleas were not taken before. The new pleadings of the parties gave rise to the following issues :—

1. Whether the reference is invalid for the reasons given in the preliminary objections?

2. Whether the objection that section 2A of the Industrial Disputes Act is *ultra vires* can be raised in this Court?
3. Whether the dispute between the parties is barred under the Punjab Co-operative Societies Act, 1961?
4. Whether there is no proper appointment of present Presiding Officer and for this reason the dispute between the parties cannot be adjudicated upon?
5. Whether the reference has lapsed for the reasons given in para 6 of the preliminary objections?
6. Whether the claimant does not fall within the definition of the workmen as given in the Industrial Disputes Act? If so, what is its effect?
7. Whether the termination of the services of Shri Risal Singh is justified and in order? If not to what relief he is entitled?

Since the objections challenging the validity of the constitution of this Court and the appointment of the present Presiding Officer were raised almost after the parties had produced their evidence, no request was made by any party that these objections be decided first that is before proceeding with the case on merits. After the issues were re-framed, the parties were given an opportunity to produce their evidence afresh and the case was adjourned for the purpose. On the date fixed the parties did not produce any evidence. The learned representatives of the parties stated that the statements of the witnesses already produced by them and which were in the file may be read in evidence on the issues as re-framed and that they did not wish to re-call or cross-examine further any of these witnesses. The Management simply further examined Shri Hukam Singh, President of the respondent society.

I have heard the learned representative of the parties and have gone through the record. My findings are as under:—

Issue No. 1.—The reference is said to be invalid on the ground that there is only an individual dispute between the workman Shri Risal Singh and the management but the Government in the order of reference has mentioned that there is an industrial dispute between the workmen and the management and according to the learned representative of the management this means a collective dispute. The learned representative thinks that by writing the word "workmen" in the order of reference the nature of the dispute or the parties to the dispute are changed. It is urged that in order to raise a dispute with regard to the termination of services two ways are upon to the aggrieved workman. The one way is that the dispute is raised by a substantial number of workmen of the establishment and the second way is that the workman aggrieved raises the dispute in his individual capacity by serving an individual demand notice under section 2A of the Industrial Disputes Act. It is submitted that the parties are not the same in both cases. According to him the workmen as a body are a party in the first case but in the second case the aggrieved workman alone is a party and so the order of reference is bad because it recites that there is an industrial dispute between the management and their workmen. It is submitted that if a statute is to be interpreted singularly it is singular and *vice versa* but otherwise it cannot be said that singular would include a plural and *vice versa*. So according to the learned representative of the management, the Government has changed the parties to the dispute which it cannot do and the Court by treating the dispute under section 2A of the Industrial Dispute is again the changing the parties to the dispute which it cannot. In support of this submission reliance is placed upon 1958-II-LLJ-752.

I have given my careful consideration to the submission of the learned representative of the management and in my opinion the authority cited by him is distinguishable and there is no force in the contention that the order of reference is not correctly worded. Under the Industrial Disputes Act there is no such thing as an individual dispute or a collective dispute. Only industrial disputes are contemplated. This term is defined in clause (k) of section 2 of the said Act and *inter alia* it means any dispute or difference between the "employers and workmen". Thus we see that only plural number is used in the definition. Now Section 2A of the Industrial Disputes Act lays down that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or differences between the workman and his employer, connected with or arising out of his discharge, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute. Thus by fiction of law even a dispute which is only between one workman and his employer if it relates to the termination of his services would be deemed to be an industrial dispute which means a dispute between workmen and the management. The Government in the order of reference have simply used the expression "industrial dispute" as defined in clause (k) of section 2 of the Industrial Disputes Act and has not changed the parties nor this Court is changing the parties. Thus there is no force in the submission of the learned representative of the management that the order of reference is not correctly worded and that the parties to the dispute are being changed.

The second ground on which the order of reference is challenged is that the order of reference is vague inasmuch as it does not indicate from which date and in what manner there has been termination of services. Thirdly it is alleged that no notice of demand has been given to the management regarding the claim now made in the Court and, therefore, the reference is bad in law. It is submitted that the notice of demand actually given to the management does not indicate any date of termination nor does it say in what manner the services have been terminated and no reference could be made on such a vague notice.

There is no force in these objections as well. The learned representative of the management has not cited any authority in support of his submission that it is necessary that in the order of reference itself should be mentioned as to from which date and in what manner there has been termination of services. If the notice of demand on the basis of which conciliation proceedings were initiated was vague inasmuch as it did not indicate on what grounds the workman attacked the legality of the order terminating his services the management could have asked for clarification. It was not done and the management before me have also not shown that they have been prejudiced in any manner. In my opinion therefore the order of reference cannot be struck down on the ground that it is vague. As regards the objection that the workman did not serve any notice of demand on the management, I find that a notice of demand was given to the management in which it was affirmed that the claimant Shri Risal Singh had not been absent and that he was on medical leave and thereafter he presented himself for duty in the office but inspite of his presence, no duty was assigned to him. Copies of this notice were sent to the authorities concerned. It is, therefore, not correct to say that no dispute was raised against the termination of services. I, therefore, find this issue in favour of the workman.

Issue No. 2.—It is submitted that the object of the Industrial Disputes Act is to maintain industrial peace between workmen and the management and a dispute between an individual workman and the management is beyond the scope of the Industrial Dispute Act. It is not for this Court to express any opinion on this point. This Court is of a special jurisdiction and it can not consider the vires of any provisions of law. I, therefore, hold that the objection that section 2A of the Industrial Disputes Act is *ultra vires* cannot be raised in this Court.

Issue No. 3.—It is submitted that under section 55 of the Punjab Co-operative Societies Act, 1961 this Court is barred from entertaining the present dispute. In support of this submission reliance is placed upon an authority of the Calcutta High Court reported in (1968) 34 FJ 426 *Workmen's Co-operative Industrial Home Limited versus I-Industrial Tribunal, West Bengal*. In this case the services of a workman were terminated and the dispute arising out of termination of the services of a workman was referred for adjudication to the first Industrial Tribunal, West Bengal. After hearing the parties the Tribunal ordered the reinstatement of the workman. The society filed a Writ Petition. It was held that the dispute regarding the termination of the services of the workman was a dispute touching the business of the society and, therefore, the Industrial Tribunal had no jurisdiction and the Registrar of the Co-operative Societies alone was competent to decide it. A contrary view has, however, been taken in 1966-I-LJ 90 which is an authority of the Full Bench of Bombay High Court. In this case it has been held that the dispute contemplated in section 91 of the Maharashtra Co-operative Societies Act (the wording of which is similar to the wording of section 55 of the Punjab Co-operative Societies Act) were only those disputes which can be entertained by a Civil Court and are based upon some contract between the parties. It was held that an Industrial Arbitrator unlike a Civil Court is not fettered by the agreement between the parties. He is required to decide the matter not according to the agreement or contract between the parties but according to what having regard to all circumstances he considers to be just and fair. In order that the workers get a proper wage, that they are not victimized or unfairly treated and that their terms of employment generally are such as will secure industrial peace, an industrial arbitrator has the power and the authority to radically modify or alter the agreed terms of employment and to impose new obligations, in a sense he may make a new contract for the parties. The same view has been taken in 1959 Punjab 34. Following the Punjab Authority by which I am bound and the Full Bench Authority of the Bombay High Court I hold that the adjudication of the present dispute by this Court is not barred by section 55 of the Punjab Co-operative Societies Act, 1961.

Issue No. 4.—It is submitted that the present Presiding Officer was originally appointed to act as Presiding Officer of the Labour Court at Rohtak but the same appointment was never notified by the Government. Secondly it is submitted that no notification has been issued that the Presiding Officer of the Labour Court at Rohtak has been transferred to preside over the Labour Court at Faridabad nor has he been reappointed and for these reasons he is not competent to act. There is no force in any of these objections because the appointment of the present Presiding Officer was duly notified by Notification No. 7103-3-Lab-67/25650, dated 24th August, 1957 after he had assumed charge of the office of the Presiding Officer, Labour Court, Rohtak. Since the Presiding Officer has jurisdiction throughout the State of Haryana no fresh notification of transfer or re-appointment was necessary when the Headquarters of the Court was shifted from Rohtak to Faridabad because there was no change in the area of jurisdiction of the Presiding Officer. It is therefore not correct to say that there is no proper appointment of the Presiding Officer. I find this issue also against the management.

Issue No. 5.—It is submitted that by reason of the amendment of notification No. 11495/12474-C Lab-57/11345, dated 7th February, 1958, by which the word "Faridabad" has been substituted for the word

"Rohtak" the Labour Court at Rohtak stands abolished and therefore the reference has automatically lapsed. In my opinion there is no force in this objection either. The effect of the amendment of the notification dated 7th February, 1958, referred to above is simply that the Headquarters of the Labour Court which was previously at Rohtak is now at Faridabad from the date the amending notification was issued. It is incorrect to say that the Labour Court at Rohtak stands abolished and for this reason the reference has lapsed. I find this issue in favour of the workman.

Issue No. 6.—It is submitted that the expression "workman" as defined in clause (s) of section 2 of the Industrial Disputes Act means only a person who is actually employed in an industry and therefore no industrial dispute can be raised by a person who is no longer in service. According to the learned representative of the management the protection and safeguards given by the Industrial Disputes Act can be obtained on the demands of only those workmen who are actually employed in the industry and the workman whose services have been terminated would fall within the definition of the "workman" only if his case is taken up by the persons actually employed and working in the establishment when the dispute is raised. Thus according to the learned representative of the management a workman who has been dismissed from service and whose cause has not been espoused by the workmen working in the establishment can not fall within the definition of "workman". In support of this contention reliance is placed upon 1966-I-LLJ 674.

There is no force in these submissions of the learned representative as well. The authority 1966-I-LLJ 674 on which reliance has been placed is distinguishable. The question discussed in this case is whether an employee whose services are terminated can invoke the summary jurisdiction under section 20 of the Minimum Wages Act. A workman as defined in clause (s) of section 2 of the Industrial Disputes Act means any person employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward and for the purposes of any proceedings under the Industrial Disputes Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute. The claimant therefore clearly falls within the definition of a "workman" as reproduced above and in view of the provisions of section 2A of the Industrial Disputes Act it is no longer necessary that the case of the dismissed workmen must be espoused by his co-workers or their union. Obviously the learned representative of the management can not challenge the vires of this provision of law in this Court by unduly stretching the definition of the workman. I find this issue also in favour of the workman.

Issue No. 7.—The facts of the case briefly stated are that the claimant Shri Risal Singh was in charge of the workshop and in that capacity the management used to advance him money from time to time to purchase spare parts, etc. for the maintenance and repair of motor vehicles as and when demanded by Shri Risal Singh. The case of the management is that in the month of September, 1965 Shri Risal Singh had Rs 1,700 with him for the purpose of purchasing motor parts but still he made purchases from M/s Lay Land House, Kashmiri Gate on credit and the management was surprised to receive the bills instead of cash memos and so Shri Risal Singh was called upon to explain as to why he had made purchases on credit and he was required to submit detailed accounts of the money with him but as he had a guilty conscience he failed to give any accounts and when pressed to do so, he submitted an application for leave from 19th November, 1965 to 30th November, 1965. It is alleged that he was allowed leave upto 26th November, 1965 and thereafter he did not report for duty without any sufficient cause or reason no did he apply for leave. So on 15th February, 1966 he was informed that he was not attending to his duties and he should clear up his account but he replied that he was on sick leave. The case of the management is that the claimant was charged on 28th February, 1966 on the ground that he remained absent from 27th November, 1965 to 29th December, 1965 and again from 1st January, 1966 to 28th February, 1966. He was also charged for misappropriating and embezzling the amount given to him for the purpose of purchasing spare parts for the workshop and he was simultaneously placed under suspension. It is alleged that Shri Risal Singh failed to give any reply within the time specified and a notice for holding an enquiry was issued to him which he also refused to receive and so an Enquiry Committee consisting of Sarvshri Hukam Singh, Datar Singh and Amar Singh was constituted and the proceedings started on 30th April, 1966 at 11 a.m. in the office of the society. It is alleged that on the persuasion Shri Risal Singh the representative of the union, Shri Amar Singh did not turn up and Shri Risal Singh also did not participate in the enquiry and so the enquiry proceedings were held by the majority of the members of the Enquiry Committee who gave a finding that Shri Risal Singh was proved to be guilty of the offences for which he was charged and the Managing Committee in their meeting dated 8th April, 1966 agreed with the report of the Enquiry Committee and thereafter a dismissal order dated 10th April, 1966 was issued which Shri Risal Singh also refused to receive. This order was therefore sent by registered post which he also did not receive. The management in support of their case have relied upon the domestic enquiry held by them and have also produced evidence on the merits of the charges framed against the workman.

The case of the workman on the other hand which he put up from the very beginning is that the allegations against him that he was absent without leave and had misappropriated any money belonging to the society were wholly wrong. It is alleged that the action of the management was *mala fide* because they had appointed Shri Partap Singh, son of Shri Hukam Singh the then President of the respondent

society to the post of workshop incharge and for this reason false charges were levelled against the claimant. It is pleaded that the notice of suspension was received by the claimant in the month of March, 1966 but no copy of the charge-sheet was ever received by him. It is denied that the claimant was ever asked to attend the office during the suspension period. On the other hand the plea is that he has been attending the office throughout but he was not allowed to work. It is pleaded that no notice was ever given to him to render accounts of the alleged advances outstanding against him. The claimant pleads that in reality some money is due to him from the society because he had spent more than the amount paid to him and he requested the Secretary several times to check the accounts and to pay him the excess amount spent by him from his own pocket but the Secretary did not do so. It is pleaded that no notice was ever received by the claimant about the appointment of any enquiry committee nor any enquiry was ever held in his presence. The workman has thus challenged the propriety of the enquiry held against him and has also pleaded that he was innocent of the charges framed against him.

The parties have produced evidence in support of their respective contentions. Shri Hukam Singh M.W. 7 who is the President of the respondent society and also a member of the enquiry committee has proved the record of the enquiry which is marked Ex. R. 14. In my opinion it is not necessary to go into the merits of the objections raised by the workman regarding the propriety of the domestic enquiry held against him, because the proceedings of the enquiry committee on the face of it are vitiated and not binding on the workman. As already pointed out the case of the management themselves is that the Enquiry Committee consisted of Sarvshri Hukam Singh, Datar Singh and Amar Singh. Admittedly Shri Amar Singh who was one of the members of the enquiry committee did not participate in the enquiry proceeding, and the committee was also not reconstituted. The learned representative of the management has submitted that Shri Amar Singh was in fact nominated a member of the enquiry committee as a representative of the union of the workmen with the object that he may safeguard the interests of the claimant Shri Risal Singh workman but Shri Amar Singh intentionally did not take part in the enquiry proceedings and, therefore, the remaining two members of the enquiry committee could legally proceed with the enquiry and the findings of the enquiry committee can not be held to be illegal simply because a member of the enquiry committee whose duty was imp'y to look to the interests of the workman did not participate. It is submitted that when ever a committee is appointed for any purpose the proceedings of the committee cannot be held to void simply if one of the members of the committee does not attend. It was urged that in the present case two out of three members took part in the proceedings.

I have carefully considered the submissions of the learned representative of the management and in my opinion the proceedings of an enquiry committee which is expected to act in a judicial manner cannot be held to be valid if one of the members of the committee does not take part in its proceedings. A judicial committee is not a committee of ordinary type which is can deliberate upon the agenda and pass resolutions by majority vote. Since an enquiry committee is supposed to act in a judicial manner the presence of all the members constituting the committee is essential so that they can give their unbiased opinion on the question as to whether the guilt of the workman is satisfactorily established by the evidence produced before them. A member of the enquiry committee is not expected to take sides and it is not correct to suggest that one of the members of the enquiry committee was simple co-opted to safeguard the interest of any party. A person whose duty is to safe guard the interest of any party appears before the enquiry committee on behalf of the party whose interest he is expected to safeguard. He is required to cross examine the witnesses who appear on behalf of the opposite party and produce evidence on behalf of the party whose interest he is expected to safe guard. No member of the enquiry committee is expected to take sides or safe guard the interest of any party. On the other hand he is expected to act impartially. The enquiry committee which was constituted to enquire into the charges framed against the claimant consisted of three persons out of whom one person admittedly did not participate in the enquiry proceedings. The management could have re-constituted the enquiry committee if they were of the opinion that one of the members was not intentionally participating in the enquiry. Hence it can not be said that the proceedings of the enquiry committee were legal and so no value could be attached to report submitted by such a committee.

The learned representative of the management submitted that no objection was raised on behalf of the workman during the course of the proceedings of the enquiry committee that it could not legally proceed with the enquiry in the absence of one of the members and it is not open to him to raise this objection at this stage. It is submitted that no prejudice is proved to have been caused to the workman by reason of non-participation in the proceedings by Shri Amar Singh and for this reason also it is not open to the claimant to challenge the validity of the proceedings of the enquiry committee.

I have given my careful consideration to this submission as well. The claimant was not represented before the enquiry committee by any qualified person etc. He could not, therefore, be expected to raise such type of legal objections. Secondly the case of the workman is that he had not even received any notice of the enquiry and the enquiry proceedings were held in his absence. As already observed his case is that from the very beginning the action of the respondent society has been *malafide*. He has stated that previously Shri Hukam Singh the present President of the respondent society was also the President and he (claimant) was a Director and that the claimant along with three other Directors informed Shri Hukam Singh that they were not prepared to work with him and did not want him to continue as

President and that the meeting of the general body may be called. The claimant has stated that in the general meeting Shri Hukam Singh was not elected as President and in his place Shri Chandan Singh was elected as President but later on Shri Hukam Singh again became President and told him (the claimant) that he should give up the charge of the workshop and he would not be kept in service. The claimant says that he proceeded on ten days medical leave and his application was supported by a Medical certificate but Shri Hukam Singh rejected this application and when he (claimant) attended on 30th November, 1965 with a certificate of fitness he was not given any duty altho gh he continued attending the office there after. Thus we see that the claimant is challenging the very bona fides of the action of the President of the respondent society from the very beginning and for this reason he should not have nominated himself as a member of the enquiry committee. It is true that the management on their part are also challenging the bona fides of the claimants. Evidence has been led to prove that the notices issued to the claimant were not accepted by him. Shri Ram Nath M.W. 3, peon of the respondent society has stated that he used to take letters of the respondent society addressed to the claimant Shri Risal Singh for delivery to him. He has further stated that Shri Risal Singh used to read these letters and then refuse to accept them and this happened when ever he took any letter of the society to the claimant for delivery. Th is we find that there are allegations and counter allegation by the parties against each other. Under these circumstances it can not be held that no prejudice was caused to the claimant by reason of the non-participation of one of the members of the enquiry committee in the proceedings. The management did not even bother to re-constitute the enquiry committee if they felt that Shri Amar Singh was intentionally not participating in the proceedings with the object of the wasting the further progress. In my opinion therefore the dismissal of the claimant can not be up-held on the basis of the report of the enquiry committee which could not legally function in the absence of one of their members.

The management have led evidence on the merits of the case as well and we have to see whether the charges against the claimant have been established. The two charges on the basis of which the claimant has been dismissed are—

- (1) The claimant was absent without leave from 27th November, 1965 to 29th December, 1965 and again from 1st January, 1966 to 28th February, 1966; and
- (2) The claimant wrongfully retained the money of the society advanced to him for making purchase of motor parts and misappropriated the same.

Regarding the charge of absence without leave, copies of the relevant entries from the attendance register have been filed which show the attendance of the claimant in the months of November, December, 1965 and January, February, March, 1966. These entries are in the hand of Shri Harika Singh the then Secretary of the respondent society. Although Shri Harika Singh has appeared as a witness on behalf of the management, yet has not proved the entries. On the contrary he simply stated that claimant proceeded on leave and submitted a leave application dated 19th November, 1965 seeking leave from 19th November, 1965 to 30th November, 1965 but this application was not sanctioned by the President and that the claimant remained absent without leave. He does not say from which date to which date the claimant was absent without leave. Only Shri Partap Singh M.W. 6, the present Secretary of the respondent society who brought the attendance register from October, 1964 to December, 1967 has stated on the basis of the entries in the attendance register that the claimant Shri Risal Singh is shown absent from 27th November, 1965 to 29th November, 1965 and again from 1st January, 1966 to 28th February, 1966 and here after he is shown as suspended up to 17th April, 1967 and then he was dismissed. He admits that the attendance register was maintained by Shri Harika Singh Ex-Secretary of the respondent society. It is not clear why the entries in the attendance register showing the claimant as absent from 27th November, 1965 to 29th November, 1965 and again from 1st January, 1966 to 28th February, 1966 were not got proved from Shri Harika Singh. The statement of Shri Partap Singh that the claimant is shown absent cannot carry any weight because the relevant entries in the attendance register were not made by the witness himself no dries he say that he had personal knowledge of the fact that the claimant was not attending to his duty and was absent without leave. Shri Hukam Singh M.W. 7 President of the respondent society does not say any thing on this point.

The learned representative of the management has submitted that the fact that the claimant was absent without leave till at least 18th December, 1965 is proved from the testimony of Dr. B. S. Chawla M.W. 4 which the claimant has stated that he was on medical leave from 18th November, 1965 to 18th December, 1965. It is submitted that Dr. B. S. Chawla M.W. 4 who is supposed to have treated the claimant during the period of his alleged illness has only stated that so far as he could remember the claimant was the same person whom he examined on 18th November, 1965 and again on 19th November, 1965 and he was suffering from Bronchitis and he prescribed him cough mixture. The witness has stated that he does not remember who he gave any medical certificate to the claimant and it is therefore rightly submitted that the claimant has failed to prove on either what or ever the he was actually ill up to 29th December, 1965.

The submission of the learned representative of the management is correct that in the statement of claim and in the other documents filed by the claimant the plea taken up by him is that he was ill up to 29th December, 1965 but these admissions have no material bearing on the case. We have already seen that according to the statement given by the claimant in Court he has stated that he was ill up to 29th November, 1965 only. Shri Harika Singh, Ex-Secretary of the respondent society who has appeared on behalf of the management has also stated that the claimant applied for leave from 19th November, 1965 to 30th November, 1965 only and this application was rejected by the President of the society. It is also not the case of the management that the claimant wrongly gave out that he was ill upto 29th December, 1965. It is therefore clear that the date 29th December, 1965 as mentioned in the statement of claim and the other documents is an inadvertent mistake otherwise it was never the case of the claimant that he was ill upto 29th December, 1965 and that had applied for leave on medical ground up to 29th December, 1965.

The case of the claimant is that he applied for leave from 19th November, 1965 to 30th November, 1965 and thereafter he reported for duty but in the meantime the management had appointed Shri Partap Singh, son of Shri Hukam Singh, President of the Society as incharge of the workshop and for this reason no duty was given to him. In my opinion this version appears to be correct and the version of the management that the claimant absented himself for no rhyme and reason is not correct. It appears to me that all the trouble in the present case has arisen because of the party faction amongst the members of the respondent society. The assertion of the claimant is that Shri Partap Singh, son of Shri Hukam Singh, President of the respondent society had been appointed incharge of the workshop. This assertion has not been controverted by the management. The further assertion of the claimant is that he was also a Director of the respondent society and he alongwith three other Directors told Shri Hukam Singh who was also the President then that they could not work with him and that a meeting of the general body be called and in that meeting Shri Hukam Singh failed to get himself elected. This assertion has also not been challenged on behalf of the management. In my opinion the efore it is proved that the relations between the claimant and Shri Hukam Singh who ag in was successful in getting himself elected as President were strained and for this reason the presence of the claimant was not tolerated. Moreover as already pointed out Shri Harika Singh the then Secretary of the respondent society whose duty it was to maintain the attendance register was in the best position to say whether the claimant actually reported for duty on 30th November, 1965 or that he was absent throughout the period from 27th November, 1965 to 29th December, 1965 and from 1st January, 1966 to 28th February, 1966 but for the reason best known to the management Shri Harika Singh was not asked to make any statement on this point. Under these circumstances I am inclined to believe the version of the claimant that he did report for duty on 30th November, 1965 but no duty was given to him because Shri Partap Singh the son of the President had already been put on duty. In my opinion, therefore, the first charge framed against the claimant that he was absent from 27th November, 1965 to 29th December, 1965 and then again from 1st January, 1966 to 28th February, 1966 is not satisfactorily proved.

The second charg. that the claimant misappropriated any amount belonging to the respondent society which was given to him as an advance for the purpose of purchasing the motor parts is also not satisfactorily proved. Sh. Harika Singh who was the first witness to be examined on behalf of the management says that the advance for the purchase of spare parts used to be made to Shri Risal Singh under his signatures obtained on chits and that no payment or advance were made to Shri Risal Singh unless he had signed a receipt for the same. The witness further says that the receipts are in the record of their office. The case of the management is that out of Rs. 1,600/- received by the claimant he failed to render accounts for Rs. 861/- The claimant does not admit that Rs. 1,600/- were received by him. Apart from the entries in the cash book and ledger no other evidence has been led to prove the payment of Rs. 1,600/- to the claimant. There is no explanation as to why the signed receipts of the claimant have not been produced. It has not been satisfactorily proved that the original receipts have been mis-placed and for this reason they could not be produced. Shri Ram Saran Singh, Accountant in his statement, dated 26th May, 1967 has simply stated that he worked as an Accountant in the respondent society from 7th March, 1960 to 15th November, 1966 and that the cash book and the ledgers were maintained by him. When examined again on 9th June, 1967 he stated that the entries in the cash book show that on 21st July, 1965 Shri Risal Singh claimant received Rs. 1,600/- as advance but this amount was not paid in his presence as the payments are made by the cashier and not by the accountant. Shri Sohan Lal M. W. 5 is the cashier of the respondent society. He does not say that he actually paid Rs. 1,600/- to the claimant. He has simply proved certain entries of the cash book. He says that on 20th July, 1965 there was a cash balance of Rs 17.22 which was carried forward to 21st July, 1965 and that the closing balance on 21st July, 1965 was Rs 167.57. He says that the accounts of the respondent society are audited six monthly by a Sub-Inspector of the Co-operative Societies and the tick marks with red pencil against the entries in the cash book and the general ledger brought in the Court were made by the Sub-Inspector who audited the account and that the entry dated 21st July, 1965 in the cash book also bears such a tick mark. He then proved a hand written copy of accounts marked Exhibit R. 26 and made a general statement that the items shown on the credit side were received by him and the items shown on the debit side were paid by him but does not say to whom he made these payment. The witness does not specifically say that he personally handed over Rs 1,600/- to the claimant Shri Risal Singh. In cross-examination the witness admitted that when a receipt comes to him for payment it already bears the signatures of the payee and also the signatures of the Manager or the Secretary on the order and he

makes payment on the basis of the receipt already signed by the payee. Under these circumstances it was very essential for the management to have produced the receipt if any which bore the signatures of the claimant and on the basis of which Rs 1,600/- are supposed to have been paid to him and to confront the claimant with the same. In case the receipt had been lost or mis-placed then secondary evidence of the receipt could have been led. As already pointed out the claimant has denied the receipt of Rs 1,600/- and he maintains that he had spent more than what was paid to him by the society as advance and that some money was due to him from the society and he had been asking the Secretary to settle his accounts but it was done so. Under these circumstances it can not be held simply on the basis of entries in the ledger and the cash book that sum of Rs 1,600/- was actually paid to the claimant and he had misappropriated a sum of Rs 861/- as stated by Shri Hanika Singh before the enquiry committee.

Even if it be held that the claimant actually received a sum of Rs 1,600/- as maintained on behalf of the management even then the charge of misappropriation can not be said to have been proved because at the most it would be a civil dispute between the parties regarding the money actually spent by the claimant on behalf of the society and the money received by him from the society. Unless there is some evidence to prove misappropriation it can not be held that the claimant actually misappropriated any money belonging to the society.

In view of my findings above it must be held that the termination of services of Shri Risal Singh was not justified and in order and therefore he must be deemed to have been in service of the society and entitled to his full wages upto the date of this award. Ordinarily an order of reinstatement should also be passed in his favour but I have come to the conclusion that there was an acute party faction in the respondent society in which the claimant was also involved and it was primarily for this reason that his services were dispensed with. Under these circumstances it would not be in the interest of the smooth working of the society to force back such a person in the service of the society. If the present management does not want to take the claimant back into their service they must pay him his full service compensation.

Dated 6th May, 1969

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

No. 2218, dated the 12th May, 1969.

Forwarded (four copies) of the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 6th May, 1969.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Faridabad.

The 29th October, 1969

No. 7050-3Lab-69 27570.—In partial modification of Haryana Government notification No. 5664-Lab-59/21284, dated the 7th July, 1969 and in exercise of the powers conferred by clause (a) of Section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948), the Governor of Haryana is pleased to appoint the Administrator, Municipal Committee Hissar and Shri Mani Ram, Executive Officer, Municipal Committee, Narnaul, in place of Shri Bhisham Seth, Executive Officer, Municipal Committee, Yamuna Nagar and Shri Mani Ram, Executive Officer, Municipal Committee, Jind, respectively, as Employers Representatives of the Committee appointed by Government—, vide Haryana Government notification No. 5664-3Lab-59/21284, dated the 7th July, 1969.

H. S. ACHREJA, Secy.